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ABSTRACT

This report describes the applicable laws regarding sex discrimination in employment. In addition to Federal law and two relevant Executive Orders, the report includes 21 state laws and the District of Columbia's law prohibiting discrimination based on sex. This document is a revision of ED 014 611. (BH)

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Laws on Sex Discrimination in Employment

Federal Civil Rights Act, Title VII
State Fair Employment Practices Laws
Executive Orders

WOMEN'S BUREAU
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1970

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EDUCATION & WELFARE
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WOMEN'S BUREAU FIFTIETH ANNIVERSARY
WOMANPOWER-
A NATIONAL RESOURCE

VT 012 252

FOREWORD

The Federal Civil Rights Act of 1964 is a historic landmark in efforts to establish equal employment opportunity for women. In turn, this legislation has been a stimulant to other significant developments toward promotion of job equality for women. At the national level, several Executive orders which prohibit discrimination in certain types of employment on the basis of sex have been issued. Many States have enacted provisions against sex discrimination as part of their fair employment practices statutes. Also, various cases involving sex discrimination in employment have reached the courts.

This publication brings these developments together and revises "Laws on Sex Discrimination in Employment," published in 1967. It was prepared by Arthur Besner under the supervision of Pearl G. Spindler, Chief, Division of Legislation and Standards.

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LAWS ON SEX DISCRIMINATION IN EMPLOYMENT

Federal Civil Rights Act, Title VII–State Fair Employment Practices Laws–Executive Orders[1]

FEDERAL CIVIL RIGHTS ACT OF 1964, TITLE VII

Title VII of the Federal Civil Rights Act, approved July 2, 1964, prohibits discrimination in private employment based on sex, in addition to the usual grounds of race, color, religion, and national origin. The title is administered by a five-member bipartisan Equal Employment Opportunity Commission appointed by the President.

Coverage and Exemptions

Title VII *covers* private employers[2] and labor organizations engaged in industries affecting commerce, as well as employment agencies, including the Federal-State Training and Employment Service system. In general, employers of at least 25 employees, unions with 25 or more members, and employment agencies dealing with employers of 25 or more persons[3] are now covered by title VII.

Title VII *exempts* from coverage private membership clubs, religious educational institutions, employees of an educational or a religious institution who further the educational or religious activities of such institution, and Indian tribes.

Unlawful Employment Practices

Under title VII it is an unlawful employment practice:

For employers to fail or refuse to hire, to discharge, or otherwise to discriminate against a person with respect to compensation, terms, conditions, or privileges of employment on the basis of sex; to limit, segregate, or classify employees in such a way as to deprive any individual of employment opportunities or otherwise adversely affect the employee's status, on the basis of sex;

For labor organizations to exclude or expel from membership, or otherwise to discriminate against any individual on the basis of sex; to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual in any way that would deprive or tend to limit employment opportunities, or otherwise adversely affect the employee's status, on the basis of sex;

For employment agencies to fail or refuse to refer for employment, or otherwise to discriminate against a person on the basis of sex, or to classify or refer for employment any individual on the basis of sex;

For employers, labor organizations, or employment agencies to print, publish, or cause to be printed or published advertisements indicating preference, limitation, specification, or discrimination on the basis of sex; or to discriminate against any individual because he has opposed an unlawful employment practice or has made a charge, testified, or participated in any investigation, proceeding, or hearing under title VII;

For employers, labor organizations, or joint labor-management committees to discriminate in admission to, or employment in, apprenticeship or other training or retraining programs on the basis of sex.

Major Exceptions to Prohibited Employment Practices

Major exceptions to prohibited employment practices may be permitted when:

Sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business.

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[1] As of February 1970.

[2] Not covered are local, State, and Federal governments and government-owned corporations.

[3] If an agency has at least one client who employs 25 or more persons, it is covered.

Differentials in compensation or different terms, conditions, or privileges of employment are based on a seniority, merit, or incentive system.

Different wages are paid in different locations.

Differentials in wages or compensation are "authorized" by the Federal Equal Pay Act.

Differentials are based on ability tests that are not intended to discriminate. (See appendix A, Guidelines on Discrimination Because of Sex.)

Effect on State Laws

It is stated specifically that nothing in title VII shall relieve a person from any liability, duty, penalty, or punishment provided by any State law, other than a law that requires or permits the doing of an act which would be an unlawful employment practice under the title.

STATE FAIR EMPLOYMENT PRACTICES LAWS

Thirty-seven States,[4] the District of Columbia,[5] and Puerto Rico have mandatory fair employment practices laws. Twenty-one[6] of these States and the District of Columbia prohibit discrimination based on sex. Of these 22 laws, 18 are administered by an independent commission and 4—Hawaii, Oregon, Utah, and Wisconsin—by a State agency.

In only 2 States—Hawaii and Wisconsin—were the prohibitions against discrimination based on sex enacted prior to the passage of the Federal Civil Rights Act of 1964. In 9 jurisdictions the laws were effective on varying dates in 1965, and in Michigan the amendment prohibiting sex discrimination was effective in 1966. In Connecticut, Idaho, and Nevada the amendments prohibiting sex discrimination were effective on specified dates in 1967; and in Alaska, Colorado, Minnesota, New Mexico, Oklahoma, Oregon, and Pennsylvania, on specified dates in 1969.

Coverage and Exemptions

Wisconsin and the District of Columbia *cover* all employers regardless of the number of employees. Maryland and Nebraska follow exactly the Federal requirements for coverage, but in the other 18 States the requirements range from 1 or more employees in Alaska, Hawaii, Minnesota, and Oregon to 25 or more in Missouri, Oklahoma, and Utah.

In addition to covering private employment, all but Alaska, Hawaii, Maryland, Nebraska, Nevada, and the District of Columbia cover public employment.

In Alaska and Maryland the laws apply only to employers. In all other jurisdictions the laws state specifically that employers, labor organizations, and employment agencies are covered.

In general, the *exemptions* follow those of title VII. Jurisdictions except Colorado, Connecticut, Hawaii, Idaho, Michigan, Minnesota, Missouri, New Mexico, New York, Oregon, Pennsylvania, Wyoming, and the District of Columbia exempt private membership or social clubs. All the jurisdictions except Connecticut, Michigan, and Oregon have some type of religious exemption—either the entire organization, a particular type of agency such as a religious educational agency, or only the employees of the organization whose work is connected with the propagation of the particular religion. Exemptions not allowed by the Federal law but included in State laws are: domestic service in 12 States—Alaska, Colorado, Connecticut, Massachusetts, Michigan, Minnesota, Nebraska, New York, Oklahoma, Oregon, Pennsylvania, Utah—and the District of Columbia; and family employment in 9 States—Connecticut, Massachusetts, Minnesota, Nebraska, New York, Oklahoma, Oregon, Pennsylvania, Wisconsin—and the District of Columbia.

Unlawful Employment Practices

In general, the employment practices prohibited by State laws are the same as those prohibited by the Federal law. However, in some instances the wording of State laws differs slightly from the wording of the Federal law in that discrimination in promotions or tenure as well as in "terms, conditions, and privileges of employment" may be prohibited. Utah is the only State that does not use the wording: "terms, conditions, and privileges of employment." Discriminatory advertising is prohibited in all the laws except those of Alaska, Maryland, Wisconsin, and Wyoming. Arizona, Colorado, Idaho, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Utah, and the District of Columbia specifically include training programs.

Major Exceptions

Sex as a bona fide occupational qualification is an exception in all the jurisdictions except Colorado, Maryland, and Wyoming, which have no exceptions of any kind. Other exceptions include: differentials pursuant to a bona fide seniority, merit, or incentive wage system, or differentials in wages paid in different locations (as provided in Arizona, Missouri, Nebraska, Nevada, Oklahoma, and Wisconsin); differences in terms and conditions of bona fide retirement, pension, and mutual benefit or insurance plans (Hawaii, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Wisconsin, and the District of Columbia); and any law that controls employment of minors (Hawaii).

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[4] Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

An additional State—Florida—excludes private employment; however, the law is mandatory with respect to State, county, and municipal employment.

[5] Police regulations were amended June 10, 1965, to include Article 47, Order No. 65-768.

[6] Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Utah, Wisconsin, Wyoming. Delaware and Washington have executive orders that ban discrimination based on sex in public employment. The Vermont fair employment practices law prohibits discrimination in wage rates only, which makes it essentially an equal pay law. The Florida law mentioned in footnote 4 includes sex.

PROVISIONS OF FEDERAL CIVIL RIGHTS ACT OF 1964 AND STATE

Coverage, Exemptions, and Unfair

PROVISIONS OF LAW	FEDERAL	STATE									
	Civil Rights Act of 1964, Title VII	ALASKA	ARIZONA	COLORADO	CONNECTICUT	DISTRICT OF COLUMBIA	HAWAII	IDAHO	MARYLAND	MASSACHUSETTS	MICHIGAN
DATE OF SEX PROHIBITION											
Enacted	7/2/64	5/22/69	4/1/65	7/1/69	6/16/67	6/10/65	6/3/63	3/8/67	5/4/65	5/3/65	12/21/66
Effective	7/2/65	8/20/69	7/20/65	7/1/69	10/1/67	7/2/65 (Police regulation)	1/1/64	5/8/67	7/1/65	8/1/65	12/21/66
COVERAGE - EMPLOYER											
Private employment	X[1]	X	X	X	X	X	X	X	X	X	X
Minimum number of employees	25 after 3 years.[2]	1	20	6	3	---	1	4	25 after 3 yrs.[2]	6	8
Minimum period of employment of required number of employees	20 weeks in current or preceding calendar year.	---	20 weeks in current or preceding calendar yr.	---	---	---	---	---	20 weeks in current or preceding calendar yr.	---	---
Public employment	---	---	X	X	X	---	---	X	---	X	X
EXEMPTIONS											
Domestic service	---	X	---	X	X	X	---	---	---	X	X
Private membership or social clubs	X	X	X	---	---	---	---	---	X	X	---
Family employment	---	---	---	---	X	X	---	---	---	X	---
Religious, educational, social, or non-profit organizations	---	X	---	X[6]	---	---	---	---	---	X	---
Religious educational institutions	X	---	X[4]	---	---	---	---	X	X	X	---
Employees of an educational institution who further its work	X	---	X	---	---	---	---	---	X	---	---
Employees of a religious institution who further its work	X	---	X	---	---	X	X	X	X	X	---
Indian tribes	X	---	---	---	---	---	---	---	---	---	---
UNFAIR EMPLOYMENT PRACTICES											
Employer											
Hiring	X	X	X	X	X	X	X	X	X	X	X
Discharge	X	---	X	X	X	X	X	X	X	X	---
Compensation	X	X	X	X	X	X	X	X	X	X	---
Promotion	---	---	---	X[7]	---	X	---	---	---	---	X[7]
Terms, conditions, privileges of employment	X	X	X	---	X	X	X	X	X	X	X
Classification, limitation, segregation	X	---	X	---	---	X	X	---	---	X	---
Advertising	X	---	X	X	X	X	X	X	---	X	X
Training programs	X	---	X	X	---	X	---	X	---	---	---
Discriminate in any way	---	---	---	---	---	X	---	---	---	X	---
Other	X	X[9]	X[9 10]	X[9]	X[9]	X[9]	X[9]	---	X[9]	X[9]	X[9]
Labor organization											
Membership (admission or expulsion)	X	---	X	---	X	X	X	X	---	X	X
Referral	X	---	---	---	---	X	---	X	---	---	---
Classification, limitation, segregation	X	---	X	---	---	X	---	X	---	---	X
Advertising	X	---	---	---	X	X	---	X	---	---	X
Training programs	X	---	X	X	---	X	---	X	---	---	---
Discriminate in any way	X	---	X	---	X	X	X	X	---	X	X
Other	X[10]	X[9]	X[9 10]	X[9]	X[9]	X[9]	X[9]	X[10]	X[10]	X[9]	X[9]
Employment agency											
Referral	X	---	X	---	X	X	---	X	---	---	X
Classification, limitation, segregation	X	---	X	---	X	X	X	X	---	X	X
Advertising	X	---	X	---	X	X	X	X	---	X	X
Training programs	---	---	---	---	---	X	---	---	---	---	---
Discriminate in any way	X	---	---	---	X	X	---	X	---	X	X
Other	---	X[9]	X[9 10]	X[9]	X[9]	X[9]	X[9]	---	---	X[9]	X[9 11]
EXCEPTIONS											
"Sex" a bona fide occupational qualification	X	X	X	---	X	X	X	X	---	X	X
Preference to Indians on or near reservation	X	---	X	---	---	---	---	---	---	---	---
Antisubversive or security measures or actions	X	---	X	---	---	X	X	---	---	---	---
Differentials based on seniority, merit, or incentive system; or wages in different locations	X	---	X	---	---	---	---	---	---	---	---
Differentials based on ability tests not intended to discriminate	X	---	X	---	---	---	---	---	---	---	---
Differentials in pay authorized by the Federal Equal Pay Act	X	---	---	---	---	---	---	---	---	---	---
Differentials based on terms or conditions of any bona fide retirement, pension, employee benefit (death and survivor benefit), or insurance plan	---	---	---	---	---	X	X	---	---	---	X
Differentials based on factors other than sex	---	---	---	---	---	---	---	---	---	---	---
Child labor laws	---	---	---	---	---	---	X	---	---	---	---
Preserves State labor laws for women	X[13]	---	---	---	X	---	---	---	---	X	---

See footnotes on page 6 .

LAWS THAT PROHIBIT SEX DISCRIMINATION IN EMPLOYMENT

Employment Practices as of February 1970

STATE–Continued											
MINNESOTA	MISSOURI	NEBRASKA	NEVADA	NEW MEXICO	NEW YORK	OKLAHOMA	OREGON	PENNSYLVANIA	UTAH	WISCONSIN	WYOMING
6/6/69 6/7/69	6/30/65 10/13/65	8/3/65 8/4/65	2/24/67 7/1/67	4/2/69 6/20/69	6/28/65 9/1/65	5/16/68 5/16/69	6/16/69 8/23/69	7/9/69 7/9/69	3/18/65 5/11/65	9/27/61 10/10/61	3/1/65 7/1/65
X 1	X 25	X 25 after 3 yrs.[2]	X 15	X 4	X 4	X 25	X 1	X 4	X 25	X ---	X 2
---	---	20 weeks in current or preceding calendar yr.	20 weeks in current or preceding calendar yr.	---	---	20 weeks in current or preceding calendar yr.	---	---	---	---	---
X	X	---	---	X	X[3]	X	X	X	X	X[3]	X
X	---	X	---	---	X	X	X	X	X	---	---
---	---	X	X	---	---	X	---	---	X	X	---
X	---	X	---	---	X	X	X	X	---	X	---
X	X[4]	---	---	---	X	---	---	X	X[4]	X[5]	X[6]
X	---	X[4]	X[4]	---	---	X	---	---	X[4]	---	---
---	---	---	---	---	---	X	---	---	---	---	---
X	---	X	X	X	X	X	---	---	X	---	---
---	---	X	X	---	---	X	---	---	---	---	---
X	X	X	X	X	X	X	X	X	X	X	X
X	X	X	X	---	X	X	X	X	X	X	X
X	X	X	X	---	X	X	X	X	X	X	X
X	X	X	---	---	---	---	---	X[7]	X[7]	X[7]	X[7]
X	X	X	X	---	X	X	X	X	---	X	---
---	X	X	X	---	X	X	---	---	X	---	---
X	X	X	X	X	X	X	X	X	X[8]	---	---
---	X	X	X	X	X	X	---	---	---	X	X
---	---	---	---	---	---	---	---	---	---	---	---
X[9 10]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	---
X	X	X	X	X	X	X	X	X	X	X	X
X	X	X	X	---	---	X	---	---	X	---	---
X	X	X	X	---	X	X	---	---	X	---	---
X	---	X	X	X	X	X	---	X	X	---	---
---	X	X	X	X	X	X	---	---	X	X	X
X	X	X	X	X	X	X	X	X	X	---	---
X[9 10]	X[9]	X[9 10]	X[9 10]	X[9]	X[9]	X[9 10]	X[9]	X[9]	X[9]	---	---
X	X	X	X	X	X	X	---	X	X	---	---
X	X	X	X	X	X	X	---	X	X	---	---
X	X	X	X	X	X	X	X	X	X	---	---
---	---	---	---	---	X	---	---	---	---	---	---
X	X	X	X	X	---	X	---	X	X	X	X
X[9 10]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	X[9]	---
X	X	X	X	X	X	X	X	X	X	X	---
---	---	X	X	---	---	---	---	---	X	---	---
---	---	X	X	---	---	---	---	X	X	---	---
---	X	X	X	---	---	X	---	---	---	X	---
---	X	X	X	---	---	X	---	---	---	---	---
---	X[12]	X	---	---	---	X	---	---	---	---	---
---	X	---	---	---	X	X	---	X	---	X	---
---	---	---	---	---	---	---	---	---	---	X	---
---	---	---	---	---	---	---	---	---	---	---	---
---	X	X	---	---	---	X	---	---	---	---	---

Table Footnotes

[1] Any activity, business, or industry engaged in or affecting interstate commerce.

[2] First effective year of act, 100 employees; second year, 75; third year, 50.

[3] By interpretation.

[4] Exempts only religious organizations or corporations and associations owned and operated by religious groups.

[5] Exempts only nonprofit fraternal or religious associations.

[6] Exempts only religious organizations or associations. In *Colorado* exemption does not apply to religious organizations or associations supported through taxation or public borrowing.

[7] In *Colorado, New Mexico, Utah,* and *Wyoming* also includes demotion; in *Michigan, Minnesota, Pennsylvania,* and *Wisconsin* also includes tenure.

[8] Also includes vocational school.

[9] Includes: (a) discrimination because of person's opposition to an unlawful practice, or because person filed a charge, testified, or assisted at a hearing; (b) aiding, abetting, inciting, compelling, or coercing the doing of an unlawful act. *District of Columbia:* also preventing any person from complying with law. *Maryland:* only (a) applicable. *Nebraska:* only (a) applicable. *Nevada:* only (a) applicable. *Wisconsin:* only (a) applicable. *Colorado* and *Utah:* only (b) applicable but also includes obstructing any person from complying with the law, or committing an act in violation of the law. *Michigan* and *Pennsylvania:* also includes limiting employment opportunities through a quota or utilizing any employment agency, placement service, training school or center, labor organization, or any other employment-referring source known to discriminate on the basis of sex.

[10] Causing or attempting to cause an employer to discriminate against an individual in violation of the law.

[11] Conducting an employment agency business under a name which directly or indirectly expresses or connotes any limitation, specification, or discrimination as to sex, except that any presently operating agency bearing a name that directly or indirectly expresses or connotes any such limitation, specification, or discrimination may continue to use its present name, if it displays, under such name wherever it appears, a statement to the effect that its services are rendered without limitation, specification, or discrimination as to sex.

[12] Also applies to differentials between a male and female in compensation, terms, conditions, or privileges of employment, if authorized by sec. 703 of the Federal Civil Rights Act of 1964 or by State law.

[13] Nothing in title VII of the Federal Civil Rights Act of 1964, as amended, exempts or relieves any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any law that requires or permits the doing of any act that is an unlawful employment practice under title VII (sec. 708). However, see also sec. 1604.1(b) (1), (2), Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission December 2, 1965, as published in the Federal Register, vol. 30, No. 232, December 2, 1965, and amended February 24, 1968, June 28, 1968, August 14, 1968, and August 19, 1969.

RELATIONSHIP BETWEEN STATE FAIR EMPLOYMENT PRACTICES LAWS AND STATE PROTECTIVE LABOR LEGISLATION FOR WOMEN

The relationship of State fair employment practices laws to State protective labor legislation for women is a potential area of conflict. Basically, State fair employment practices laws prohibit differential treatment of persons with respect to employment opportunities. State protective labor laws, because their intent is to protect women from exploitation and hazards, may result in d nying them certain employment opportunities.

The fair employment practices laws of Connecticut, Massachusetts, Michigan, Missouri, Nebraska, and Oklahoma include specific provisions for the retention of State protective labor legislation for women. Several would prevent, in effect, interpretation of the State fair employment practices law to void, repeal, or supersede State protective labor legislation for women. In other States the provisions would permit differentiation in employment practices on the basis of sex if it is otherwise required or permitted by State laws. A New York ruling and a Utah guideline provide for bona fide occupational qualifications when fulfilling the provisions of other statutes. The Pennsylvania attorney general ruled that the Women's Labor Law, to the extent that it conflicts with the Human Relations Act, has been impliedly repealed. The attorney general of Michigan ruled that the State's hours law is applicable to employers with less than 25 employees.

Excerpts from the laws, rulings, and opinions follow:

Connecticut

No provision of this act shall be construed to void or supersede any statute relating to the employment of women, including their hours of work or working conditions, or any regulations promulgated under such statutes. (*Conn. Stat. Ann.* ch. 563, sec. 31-126a (1960))

Massachusetts

The provisions of this chapter shall be construed liberally for the accomplishment of the purpose thereof, and any law inconsistent with any provisions hereof shall not apply, but nothing contained in this chapter shall be deemed to repeal any provision of chapter one hundred and forty-nine which establishes standards, terms or conditions of employment which are applicable to females. . . . (*Mass. Ann. Laws* ch. 151B, sec. 9 (1958))

Michigan

Any such refusal to hire or discrimination shall not be an unfair employment practice if based on law, regulation. . . . (*Mich. Comp. Laws Ann.* sec. 423.303a (1967))

Apart from the foregoing statutory provisions which acknowledge state regulatory power where the state law on the subject is not inconsistent with the federal law, Title VII also yields to the state regulation of those employers not specifically defined as employers under Section 701 (b) of the federal act . . . .

Those employers not covered by the federal act will therefore remain subject to the hours limitations of Michigan law in view of the statutory provisions of the Civil Rights Act of 1964. . . .

Therefore, it is concluded that a refusal to hire or other discriminatory act based on the Michigan law regulating women's working hours would not be an unfair employment practice under the Michigan Fair Employment Practice Act and that the state act must be enforced against employers *not covered by the Federal Civil Rights Act of 1964.* (*Mich. Atty. Gen. Op.* No. 4687, December 30, 1969)

Missouri

Notwithstanding any other provision of this title, it shall not be an unlawful employment practice because of sex to differentiate in employment, compensation, terms, conditions, or privileges of employment between male and female employees if such differences are otherwise required or permited by the laws of this state. . . . (*Mo. Stat. Ann.* ch. 296, sec. 296.020 (1965))

[The Missouri Fair Employment Practices Act] prohibits discriminatory treatment based

upon sex in employment matters, but also expressly recognizes that special treatment based on sex in regard to employment is not to be considered discriminatory if other laws require or permit it. The Missouri statutes mistaken by some to be in conflict with the Missouri Fair Employment Practices Act are not drafted so as to be discriminatory towards women. On the contrary these laws are designed to protect women. Hence women are not being provided with unequal treatment but rather they are given special treatment. . . .

It must be clearly understood [however] that the laws hereinbefore mentioned must be the real reason for denial of the employment opportunity and ... the Human Rights Commission contemplates close examination of each situation in order to determine that the employment is in fact covered by said laws. . . . (*Mo. Atty. Gen. Op.* No. 82, January 31, 1967)

Nebraska

Nothing contained in this act shall be deemed to repeal any of the provisions of the civil rights law, any other law of this state, or any municipal ordinance relating to discrimination because of race, creed, color, religion, sex, or national origin. (*Rev. Stat. of Nebr.* ch. 48, sec. 48-1124 (1968))

New York

D. Bona Fide Occupational Qualifications

The law provides for a bona fide occupational qualification in certain cases.

1. Consideration may be given to sex as a bona fide occupational qualification in such circumstances, among others, as follows:

   (c) Where sex is a bona fide factor in fulfilling the provisions of other statutes, e.g., the New York City Adm.Code Sec.B32-196.0(b),which requires that only men masseurs may serve men and only women masseurs may serve women, or laws creating a differential in the conditions of employment for females, e.g., Labor Law Secs. 172, 173, 174, 175, and 176.2 which prescribe hours of work for women. (*Rulings of State Commission for Human Rights Interpreting "Sex" Provisions*)[7]

Oklahoma[8]

Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice because of sex to differentiate in employment, compensation, terms, conditions, or privileges of employment between male and female employees if such differences are otherwise required or permitted by the laws of this State. . . . (*Okla. Stat. Ann.* title 25, sec. 1311 (1955))

Pennsylvania

The Human Relations Act [of 1955 as amended by Act 56 of 1969] reflects the change in the social and economic attitude which required protective and preferential legislation for females. It nullified the reasons which existed at the time of the Women's Labor Law. . . .

The Women's Labor Law was originally enacted in 1913 to alleviate the oppressive circumstances relative to hours and conditions of employment of females. The statute was an outgrowth of flagrant sweat-shop conditions which impaired the health and welfare of female employees.

That Law regulates the hours and conditions of employment of females in any establishment where work is done for compensation of any sort. It also deals with such items as intervals between work periods, suitable facilities for seating females, washrooms, dressing rooms, lavatories, lunch rooms, and drinking water. Criminal penalties are provided for any violations of its provisions. The effect of the

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[7] Source: Commerce Clearing House, Employment Practices Guide, paragraph 26,053, reports: The rulings are intended merely as "working presumptions" in carrying out the purposes of the law.

[8] See also page 10.

statute is to accord preferential treatment and status to female employees.

The Pennsylvania Human Relations Act was enacted in 1955 to proscribe discriminatory activities in the fields of housing, public accommodations and employment. That statute was amended by Act No. 56 of 1969 to include discrimination in the named areas on account of sex of the individual. Specifically, it provides that it shall be an unlawful discriminatory practice for an employer to refuse to hire or employ any person because of sex unless based on a bona fide occupational classification (Section 5(a)). The statute eliminates the need and justification for preferential treatment in the field of employment because of sex by placing males and females on an equal footing.

Recent social and economic changes have improved the status of females so that they now enjoy a status substantially equal to that of males in all areas of employment opportunities. Thus, the conditions prompting the enactment of the 1913 statute no longer exist. As a matter of fact, females now enjoy the freedom to be employed under conditions and hours of employment equivalent to that of males. . . .

In view of the sex discrimination provision of the Pennsylvania Human Relations Act and its repugnancy to the 1913 law, we must conclude that an implied repealer of the earlier statute was intended by this later amendment. (*Pa. Atty. Gen. Op.*, November 14, 1969)

Utah

Sec. 4. *Bona Fide Occupational Qualifications*—The law provides for a bona fide occupational qualification in certain cases.

1. Consideration may be given to sex as a bona fide occupational qualification in such circumstances:

   (c) Where sex is a bona fide factor in fulfilling the provisions of other Statutes. Section 34-4-1, Utah Code annotated 1953, which prohibits employment of women in mines and smelters. (*Utah Industrial Commission, Anti-Discrimination Division Sex Discrimination Guidelines,* September 19, 1966)[9]

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[9] Source: Commerce Clearing House, Employment Practices Guide, paragraph 28,120.

RELATIONSHIP BETWEEN TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND STATE PROTECTIVE LABOR LEGISLATION FOR WOMEN

Since the passage of the Civil Rights Act of 1964, questions have arisen concerning the relationship of its title VII and State protective labor legislation. Title VII prohibits discrimination on the basis of sex in employment. However, State protective labor legislation—including restrictions on the employment of females in certain occupations, on the lifting or carrying of weights in excess of prescribed limits, on hours of employment—by its very nature, requires different treatment of individuals on the basis of their sex. Thus the issue arises as to whether observance of this legislation involves a conflict with title VII. As an illustration: Is it a violation of title VII for an employer to refuse to hire women in positions which entail lifting of weights in excess of the specific weight spelled out in a State law?

It was maintained by those advocating retention of State protective legislation that no real conflict existed since Congress had not intended to strike down such laws but only those which denied equality of opportunity to women. Those who maintained a contrary position insisted that State protective legislation was inherently discriminatory.

On August 19, 1969, the Equal Employment Opportunity Commission issued revised Guidelines on Discrimination Because of Sex stating:

> (b)(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, or for more than a specified number of hours per day or per week.
>
> (2) The Commission believes that such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect. Accordingly, the Commission has concluded that such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

The Equal Employment Opportunity Commission has said that although some State laws may prescribe certain minimum wages or overtime pay for women, this is no justification for refusal to hire them, and the same benefits must be available to male employees. This statement, however, does not appear in the guidelines.

Previous to the issuance of the new guidelines, the attorneys general of South Dakota, North Dakota, and Kentucky expressed opinions concerning enforcement of protective legislation in their respective States. The attorney general of South Dakota ruled on February 27, 1969, that the State's law limiting working hours of women must yield to title VII. The attorney general of North Dakota announced on April 18, 1969, that recent developments, including court decisions, might prevent prosecution of violations of the State's hours law regulating employment of women. However, the Kentucky attorney general ruled on June 26, 1969, that the State's hours law would remain in effect until the U.S. Supreme Court holds otherwise.

Subsequent to the issuance of the new guidelines, the Ohio Department of Industrial Relations announced on September 4, 1969, that it would not prosecute alleged violations of State protective labor legislation in conflict with the revised guidelines of the Equal Employment Opportunity Commission. The attorney general of Oklahoma ruled on November 14, 1969, that the State's hours law limiting the employment of women was in conflict with title VII, and, because of the supremacy clause of the U.S. Constitution, the Federal statute must take precedence over the State law. In a November 25, 1969, opinion, the commissioner of the North Carolina Department of Labor said that until a Federal court holds otherwise the Department should continue to enforce the State's statutes setting hours of work for women. On December 16, 1969, the Equal Employment Opportunity Commission ruled that, notwithstanding the District of Columbia hours law, it was unlawful for an employer to deny equal overtime opportunities to female employees. The provisions of the law which limit working hours, the Commission ruled, were repealed by

the enactment of title VII. On December 30, 1969, the attorney general of Michigan also ruled that title VII superseded the State's law limiting the working hours of women. The Michigan hours law is, the opinion stated, applicable to employers with less than 25 employees, as title VII is not applicable in such cases.

Also, on November 14, 1969, the attorney general of Pennsylvania, in ruling that the July 1969 amendment to the Human Relations Act prohibiting discrimination in employment on account of sex nullified the State protective labor laws, noted that the Pennsylvania act was consistent with title VII. He pointed out: "Rules and regulations were promulgated under the Federal statute to provide guidelines for employers and, recently, these regulations were amended to provide that no defense can be maintained based on a State statute which may be in conflict with the Federal law and regulations. Therefore, it is our opinion . . . that the Women's Labor Law, to the extent that it conflicts with the Pennsylvania Human Relations Act, has been impliedly repealed."

In the past few years various cases involving sex discrimination have reached the courts. However, no case has reached the U.S. Supreme Court. Several of the leading cases are here summarized.

In *Bowe* v. *Colgate-Palmolive Co.*,––F. 2d––, 61 LC Par. 9326 (7th Cir. 1969), reversing, in part, 272 F. Supp. 332 (S.D. Ind. 1967), an employer was alleged to be in violation of title VII in not permitting bids by women for jobs which required the lifting of weights in excess of 35 pounds. Although this case did not involve a State weightlifting law, the lower court held that title VII did not preclude an employer from establishing such restrictions. This finding was reversed by the appellate court, which held that the employer's weightlifting restriction for female employees did not constitute a bona fide occupational qualification. In its reversal, the appellate court found that the intention of title VII, as reflected in the guidelines issued by the Equal Employment Opportunity Commission, was to consider employees on an individualized basis rather than to impose general restrictions relating to positions of employment. Accordingly, the employer was required to notify workers of opportunities to demonstrate capacities in connection with positions of more strenuous employment and to permit job bids.

In *Weeks* v. *Southern Bell Telephone and Telegraph Co.*, 277 F. Supp. 117 (S.D. Ga. 1967), rev'd 408 F. 2d 228 (5th Cir. 1969), the lower court validated an employer's refusal to hire a woman as switchman on the basis of a State law which limited the weight women could lift to 30 pounds. Before the case came before the appeals court, Georgia replaced its law with one which provided that weights to be lifted or carried manually must be limited so as to avoid strain or undue fatigue. Consequently, the court stated that it need no longer rule on the reasonableness or constitutionality of the repealed law. Rather, because the new rule did not prevent women from being switchmen, the question was whether Southern Bell had satisfied its burden of proving that the requirements of the job justified excluding women from consideration.

The appellate court reversed the lower court, holding that the employer had failed to prove sex as a bona fide occupational qualification for this postion of employment. No evidence was introduced, the court noted, which reported that the duties of the position were so strenuous that all or most women would be unable to perform them. In another issue, the court held that the job's entailment of emergency callouts after midnight was no basis for the rejection of females. The case is now pending before a lower court on the question of back pay.

In *Rosenfeld* v. *Southern Pacific Co.*, 293 F. Supp. 1219 (C.D. Calif. 1968), a woman was denied a position as agent-telegrapher on the basis that the position required daily overtime and lifting of weights in excess of the State limitation. The court found a conflict between title VII and the California maximum hours law and weightlifting restriction, and held that the supremacy clause of the U.S. Constitution required that the State law yield to the Federal. This case is now under appeal and is expected to be the first case to reach the U.S. Supreme Court on the conflict between title VII and State protective labor legislation for women.

In *Gudbrandson* v. *Genuine Parts Co.*, 297 F. Supp. 134 (D. Minn. 1968), a woman was denied a position as warehouseman on the basis of a weightlifting restriction applicable to female employees established by the employer. The court upheld the employer's restriction as a bona fide occupational qualification reasonably necessary to the normal operation of the particular business. The court indicated that some women might be able to perform the work without hazard but felt the process of selection would involve a high risk of danger and inefficiency.

In *Ward* v. *Luttrell*, 292 F. Supp. 162 (E.D. La. 1968), the court upheld the Louisiana hours law, notwithstanding title VII.

In *Richards* v. *Griffith Rubber Mills,* 300 F. Supp. 338 (D.C. Oreg. 1969), the court held that title VII superseded an Oregon order regulating the weights female workers were permitted to lift.

In *Cheatwood* v. *South Central Bell Telephone and Telegraph Co.,* ––F. Supp.––, 60 LC Par. 9299 (N.D. Ala. 1969), the court found that a position as commercial representative, which entailed canvassing for new business and the lifting, on an average daily basis, of approximately 60 pounds, did not warrant application of a bona fide occupational qualification exception. This was notwithstanding evidence that males, in this circumstance, could perform employment tasks somewhat more efficiently than females.

EQUAL EMPLOYMENT OPPORTUNITY BY FEDERAL CONTRACTORS

Executive Order 11246, as amended by Executive Order 11375[10]

Executive Order 11246, as amended by Executive Order 11375 on October 13, 1967, prohibits discrimination on the basis of sex[11] by Federal contractors and subcontractors and on federally assisted construction projects. The order directs that in contracts negotiated by the Federal Government and in Federal construction contracts a nondiscrimination clause be included. The Office of Federal Contract Compliance (OFCC) of the U.S. Department of Labor administers the order. Executive Order 11246, as amended, specifically requires Government contractors and subcontractors to institute an affirmative action program designed to insure hiring without regard to sex. There is to be no discrimination in: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

On January 17, 1969, the OFCC issued proposed Sex Discrimination Guidelines. Hearings were held August 4-6, 1969, and the oral testimony, along with the written data, views, and arguments filed, is being reviewed before final issuance of the interpretations and guidelines.

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Executive Order 11478[12]

Executive Order 11478 prohibits discrimination because of sex, as well as race, color, religion, or national origin, in Federal employment. It replaces those parts of Executive Order 11246 as amended by Executive Order 11375 which provided for equal employment opportunity in the Federal Government. It directs Federal agencies to formulate employment programs insuring nondiscrimination. This order is administered by the U.S. Civil Service Commission.

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[10] See appendix B.

[11] Discrimination in employment because of race, creed, color, or national origin is prohibited under Executive Order 11246.

[12] See appendix C.

Chapter XIV–Equal Employment Opportunity Commission*

PART 1604--GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by Section 713(b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e--12(b), the Equal Employment Opportunity Commission hereby amends Chapter XIV of Title 29 of the Code of Federal Regulations to add a new Part 1604, entitled Guidelines on Discrimination Because of Sex. Because the provisions of the Administrative Procedure Act (5 U.S.C. 1003) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date, are inapplicable to these interpretative rules, they shall become effective immediately and shall be applicable with respect to cases presently before or hereafter filed with the Commission.

Sec.

1604.1 Sex as a bona fide occupational qualification.
1604.2 Separate lines of progression and seniority systems.
1604.3 Discrimination against married women.
1604.4 Job opportunities advertising.
1605.5 Employment agencies.
1604.6 Pre-employment inquiries as to sex.
1604.7 Relationship of Title VII to the Equal Pay Act.

AUTHORITY: The provisions of this Part 1604 are issued pursuant to Sec. 713(b), Civil Rights Act of 1964, 78 Stat. 265.

Sec. 1604.1 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels–"Men's jobs" and "Women's jobs"–tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of co-workers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(iv) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification exception unless the expense would be clearly unreasonable.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) (1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, or for more than a specified number of hours per day or per week. (2) The Commission believes that such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect. Accordingly, the Commission has concluded that such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

* 29 CFR.

Sec. 1604.2 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

Sec. 1604.3 Discrimination against married women.*

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

Sec. 1604.4 Job opportunities advertising.**

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns, classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

Sec. 1604.5 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

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*An appellate court has ruled that refusal to hire women with preschool-age children is not an unlawful employment practice under the Civil Rights Act of 1964 (*Phillips* v. *Martin Marietta Corp.*, 411 F. 2d 1 (5th Cir. 1969)). The Department of Justice and the Equal Employment Opportunity Commission, on February 11, 1970, filed an *amicus curiae* brief supporting plaintiff's January 10, 1970, petition for *certiorari* to the U.S. Supreme Court.

**This guideline, first announced August 9, 1968, was originally scheduled to become effective December 1, 1968 (33 F.R. 11539, August 14, 1968). A suit instituted by the American Newspaper Publishers Association and the Evening Star Newspaper Co., and the appeal from the district court's decision in the case initially delayed the effective date of the guideline. The appellate court permitted the guideline to be effective January 24, 1969, pending settlement of litigation. (*American Newspaper Publishers Association* v. *Alexander*,--F. 2d--, 59 LC Par. 9203 (D.C. Cir. 1969)).

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Sec. 1604.6 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male———, Female———"; or "Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Sec. 1604.7 Relationship of Title VII to the Equal Pay Act.

(a) Title VII requires that its provisions be harmonized with the Equal Pay Act (section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)) in order to avoid conflicting interpretations or requirements with respect to situations to which both statutes are applicable. Accordingly, the Commission interprets section 703(h) to mean that the standards of "equal pay for equal work" set forth in the Equal Pay Act for determining what is unlawful discrimination in compensation are applicable to Title VII. However, it is the judgment of the Commission that the employee coverage of the prohibition against discrimination in compensation because of sex is co-extensive with that of the other prohibitions in section 703, and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) Accordingly, the Commission will make applicable to equal pay complaints filed under Title VII the relevant interpretations of the Administrator, Wage and Hour Division, Department of Labor. These interpretations are found in 29 Code of Federal Regulations, Part 800.119-800.163. Relevant opinions of the Administrator interpreting "the equal pay for equal work standard" will also be adopted by the Commission.

(c) The Commission will consult with the Administrator before issuing an opinion on any matter covered by both Title VII and the Equal Pay Act.

Sec. 1604.31 Pension and retirement plans.

(a) A difference in optional or compulsory retirement ages based on sex violates Title VII.

(b) Other differences based on sex, such as differences in benefits for survivors, will be decided by the Commission by the issuance of Commission decisions in cases raising such issues.

Executive Order 11375

AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

> "(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
>
> "(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

> "(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it

consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I* shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE,
October 13, 1967

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* See appendix C, Executive Order 11478.

APPENDIX C

Executive Order 11478

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3. The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

Sec. 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

Sec. 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

Sec. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

RICHARD NIXON

THE WHITE HOUSE,
August 8, 1969

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